IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29.08.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice S.MANIKUMAR

H.C.P.No.520 of 2006

Panneer Selvam ... Petitioner

-vs-

1.The State of Tamil Nadu,
Rep. by its Secretary to Government
Prohibition and Excise Department,
Fort St.George, Chennai - 9.

2.The District Magistrate
and District Collector,
Salem District,
Salem ... Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus to direct the respondents to produce the detenu Panneerselvam, before this Court now confined at Central Prison, Salem and set him at liberty and to call for the records pertaining to the order of detention passed in CMP No.3/goonda/CS/2006 dated 27.01.2006 passed by the second respondent and set aside the same.

For Petitioner : Mr.V. Parthiban
for Mr.S.Paul Gnanmuthu

For Respondents : Mr.M.Babu Muthu Meeran,
Addl. Public Prosecutor

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O R D E R

(Order of the Court was made by P.SATHASIVAM, J.)

The petitioner, who is detained as a "Goonda" as contemplated under the Tamil Nadu Prevention of Dangerous Activities of Boot-leggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Slum

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Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14, 1982), by the impugned detention order dated 27.01.2006, challenges the same in this petition.

2. Heard the learned counsel appearing for the petitioner as well as the learned Additional Public Prosecutor.

3. Learned counsel for the petitioner, by drawing our attention to paragraph No.5 of the grounds of detention and the amendment dated 28.02.2006 to the detention order dated 27.01.2006, contended that first of all, the detaining authority has no power to pass such an order after approval by the Government and secondly, the said order has deprived the detenu in making effective representation.

4. On going through the averments made in paragraph No.5 of the grounds of detention dated 27.01.2006 and the proceedings of the detaining authority dated 28.02.2006 amending the word from the said paragraph No.5, we are unable to accept both the contentions for the following reasons.

5. It is not in dispute that the detention order was passed by the detaining authority on 27.01.2006. It is brought to our notice that the said order was approved by the Government on 07.02.2006 that is, within the prescribed period. However, the detaining authority after noting that he has not specifically mentioned about the urgency or the detenu being coming out on bail by orders of the Court in paragraph No.5, issued proceedings dated 28.02.2006, wherein it is stated "In the said grounds on which the detention order for the words in para 5 in line Nos.4 and 7 "Likelihood" the words "Very Likely" shall be substituted.

6. First of all, we are of the view that the nomenclature "likelihood", "from likelihood", "real possibility", "very likely" or "most likely" are not relevant. In fact, in 2005(4)CTC 497 [K.Thirupathi vs. District Magistrate and District Collector, Tiruchirpalli and another], a full Bench of this Court (Madurai Bench) has held:

> "29. In view of the above, we hold that strict insistence of the usage of the word "imminent" is not necessary and the other convincing expressions like "real possibility", "very likely" or "most likely" can be used by the detaining authority to reflect its satisfaction with regard to immediate release of the detenu on bail. We answer the Reference accordingly."

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7. In such circumstances, we are of the view that the amendment issued by the detaining authority is unnecessary. The Courts have taken a view that the detaining authority, before proceeding to detain any person under Act 14 has to satisfy that, on the date of passing of the order, the detenu was under Judicial custody by orders of the Court and he is likely to come out by filing bail application and on the orders of the Court. The detaining authority has to further take note of the fact that, if he comes out on bail, he will indulge in further activities, which would be prejudicial to the maintenance of public peace and public order. After arriving at such a conclusion, it must have called for the required details. It is not in dispute that the detaining authority was not possessed of the required details. In such circumstances and in view of the clarification of the Full Bench of this Court (Madurai Bench), we do not find any merit in the contention raised by the learned counsel for the petitioner.

8. Apart from the above conclusion, though it is stated that the amendment has infringed the right of the detenu in making effective representation, no cause is shown to us by the detenu how this amendment has affected his right or interest in making a representation to the authority concerned. In such circumstances, in the absence of prejudice at the instance of the detenu, we are unable to accept the contention raised by the learned counsel for the petitioner. Except the above said contention, no other ground is urged disputing the detention order. Consequently, this petition fails and the same is dismissed.

gms

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1.The Secretary to Government
State of Tamil Nadu,
Prohibition and Excise Department,
Fort St.George, Chennai - 9.

2.The District Magistrate
and District Collector,
Salem District,
Salem.

3. The Joint Secretary to Government
Public (Law and Order) Department,
Fort Saint George, Chennai - 9.

4. The Public Prosecutor, High Court
Madras

5. The Superintendent, Central Prison, Salem

NG(CO)
NM(01.09.2006)

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